

pvr

1

1comp-12-18=app(l)15580-22

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

CONTEMPT PETITION NO.12 OF 2018

DEEPAK KUMAR JAIN & ANR.

..Petitioners

Vs.

SANJAY CHANDRAKANT PANCHAL & ANR.

..Respondents

Mr. Abhishek Sawant with Mr. Ameet Mehta, Ms. Vaishali Sanghavi,
Mr. Hrishikesh Nadkarni, Ms. Mansi Solanki i/b. Solicis Lex for
Petitioner.

Mr. Ashok Saraogi for Respondents.

CORAM : G.S. KULKARNI, J.

DATE : JULY 5, 2022.

PC.:

1. The petitioners have filed this contempt petition making a grievance that the respondents have committed contempt of the orders dated 31 July 2017 passed by the learned Arbitrator. On 28 April 2022 this Court had issued notice to the respondents-contemnors when the following order came to be passed:-

1. “This contempt petition has been filed alleging the contempt of an award dated 31 July 2017 passed by the learned arbitrator, which reads thus:-

“a) that the respondents are ordered and directed to secure an amount of Rs.50 lacs to the claimant by furnishing a Bank

Guarantee of a nationalized bank or depositing the amount of Rs.50 lacs in an escrow account with a bank which gives such escrow facilities within a period of four weeks from the date of this order.”

2. Learned Counsel for the petitioners has drawn the Court’s attention to the provisions of Section 17(2) of the Arbitration and Conciliation Act,1996 (for short ‘**the Act**’) to contend that even if the execution proceedings are filed that does not mean that the respondents-contemnors would not comply with the directions of the learned sole Arbitrator as contained in the said interim order. He would submit that the entire purpose of the arbitral tribunal making the interim orders would stand defeated and it is for such reason the provisions of sub-section (2) of Section 17 of the Act have been incorporated, so as to make the provisions of the Code of Civil Procedure applicable in regard to enforceability of the interim orders passed by the arbitral tribunal as if the order passed by the Court.

3. The learned Counsel for the petitioners has also drawn the Court’s attention to the provision of Rule 2A of the Code of Civil Procedure, 1908 to submit that the Court in these circumstances would be empowered to apply such provisions of Rule 2A of Order 39 of the CPC as the respondents with impunity has disobeyed the orders of the arbitral tribunal, which are now required to be the orders of the Civil Court. In support of his contention, learned Counsel for the petitioners has placed reliance on the decisions of the Supreme Court in **Alka Chandewar Vs. Samshul Ishrar Khan** [(2017)16 SCC 119), and **Rama Narang vs. Ramesh Narang & Anr.** [(2016)11 SCC 114] to contend that it is now clearly held that the interim orders passed by the tribunal needs to be complied and not disobeyed by the litigants.

4. On the other hand, learned Counsel for the respondents would submit that the execution application has already been filed by the petitioners and therefore, no orders need to be passed.

5. I find myself persuaded to accept the submissions of the learned counsel for the petitioner considering the clear provisions of

sub-section (2) of Section 17 of the Act, by virtue of which the law has conferred a status to an order passed under Section 17(1) by the arbitral tribunal to be deemed to be an order passed by the Civil Court for the purposes of its enforceability. If that be the position, then clearly the provisions of Order 39 Rule 2A of the CPC would become applicable to the facts of the case as also the provisions of the Contempt of Court Act, 1971. Accordingly, the respondents-contemnors are required to be called upon to show cause to why proceedings under the Contempt of Courts Act read with the provisions of Rule 2A of Order 39 be not initiated against him for willfully disobeying the orders dated 31 July 2017 passed by the arbitral tribunal. Hence, the following order:-

ORDER

- (i) Issue notice to the respondents as to why an action for having committed contempt of Court and for a punishment thereof be not taken against the respondent.
- (ii) A reply to the notice be placed on record on or before 6 June 2022. Stand over to 14 June 2022 at 2.30 p.m.
- (iii) The respondents-contemnors are directed to remain present in the Court on the adjourned date of hearing.
- (iv) In the event, the respondents do not remain present in the Court on the adjourned date of hearing, the Court would be constrained to pass further appropriate orders as known to law to secure their presence.”

2. On 28 June 2022 as the respondents-contemnors were not present before the Court, the following order was passed:-

- 1. “With extreme displeasure, it is required to be observed that despite the clear directions order of this Court, the respondents/contemnors are not present before the Court when the proceedings are taken up for hearing.
- 2. It is informed by Mr. Saraogi, learned counsel for the respondents that the respondents were waiting in the Court since morning but as there were some medical issue, they were required to leave the Court.

3. As this matter was specifically kept today at 2.30 p.m, there was no reason as to why the respondents should attend the Court in the morning session. Also it appears that it was not a too an emergent situation for the respondents to leave the Court, without seeking permission of the Court. Be that as it may, Mr. Saraogi assures that the respondents will remain present in the Court on the adjourned date of hearing.

4. Mr. Saraogi tenders a reply affidavit of the respondents. He categorically states that the joint reply of the respondents tendered today (dated 1 July, 2022) is not a reply to the show cause notice issued on the present proceedings but is a reply to the petition, as he states that the show cause notice has not been received by the respondents.

5. For the sake of re-verification of such statement, when a query is made to Mr. Saraogi, he reiterates that the reply is a reply affidavit to the petition and not to the show cause notice. The statement of Mr. Saraogi on behalf of the respondents is accepted. Such stand of the respondents would be material for the Court when it adjudicates the contempt proceedings.

6. The proceedings are accordingly adjourned to **5 July, 2022 at 2.30 p.m.** The respondents are directed to remain present on the adjourned date of hearing, failing which, there would be no alternative but to issue a non-bailable warrant against the respondents to secure their presence.”

3. On such backdrop, the petition is listed today.

4. Today, Mr.Saraogi, learned Counsel for the respondents/contemnors has placed on record a joint affidavit of the contemnors dated 4 July 2022 wherein in unnumbered paragraph (3) on page 2 it is stated that the respondents/contemnors undertake to furnish a bank guarantee in the sum of Rs.50 lakhs within a period of four weeks from today in compliance with the order dated 31 July 2017 passed by the learned sole Arbitrator. Mr.Saraogi has clarified that when in paragraph 3 the contemnors state that they shall furnish the bank guarantee, it is being furnished in compliance of the interim orders passed by the arbitral tribunal, which shall be without prejudice to the rights and contentions of the contemnors in the arbitration proceedings. He has made such statement on instructions from the

contemnors/respondents who are present in the Court. Mr.Saraogi states that the bank guarantee to be furnished by the contemnor shall be of ICICI Bank. Statement is accepted.

5. In view of the statement, learned Counsel for the petitioners states that his clients would also not intend to agitate the proceedings any further. He fairly states that on the Court accepting such undertaking of the respondents/contemnors to furnish bank guarantee of Rs.50 lakhs within a period of four weeks, the contempt action being initiated against the contemnors/respondents be dropped and the contempt petition be disposed of.

6. In my opinion, as the contemnors/respondents have come forward to purge the contempt in the manner as set out in paragraph 3 of the affidavit dated 4 July 2022, as noted above, further adjudication is not called for. The contempt notice issued against the respondents-contemnors accordingly, is dropped.

7. The petition is accordingly disposed of by accepting the statement as made by the respondents/contemnors in the affidavit dated 4 July 2022. However, if the undertaking as furnished is not complied, liberty to the petitioners to revive the present proceedings. Also such conduct of the respondents/contemnors shall be considered as a matter of an aggravated contempt. No costs.

8. List the proceedings for compliance on 5 August 2022.

9. Needless to observe that the bank guarantee to be furnished initially for a period of one year and thereafter, it shall be kept renewed till the final adjudication of the arbitral proceedings.

[G.S. KULKARNI, J.]